

# VISM - TERMS OF SERVICE

## Definitions

**Add-On Services:** means additional services or functionality that may be added to the Customer Subscription.

**Agreement:** these Terms of Service and any Order Form.

**Data:** the data inputted by the Customer or any User, or by Vism on the Customer's behalf or otherwise generated in respect to the Customer's use of the Services.

**Documentation:** any documentation made available to the Customer by Vism from time to time, whether in electronic form or otherwise, which sets out a description and user instructions for the Services.

**Fees:** the fees payable by the Customer to Vism for the Customer Subscription as detailed on the Order Form.

**Initial Term:** the initial term of this Agreement, which shall commence on the Start Date.

**Intellectual Property Rights:** all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in each case in the United Kingdom and together with all renewals and extensions.

**Minimum Specification:** means the specification which the Customer hardware is required to meet in order to use the Services, as revised from time to time.

**Order Form:** the Customer order for Services detailing the Fees relating to the Customer Subscription or any Add-On Services and incorporating this Agreement. This may be detailed in the invoice or in a separate document.

**Renewal Term:** the Initial Term and any subsequent terms described in clause 15.1.

**Start Date:** the date Vism first make the Services available to the Customer.

**Subscription/Services:** means the Services to be provided to the Customer as detailed in the Customer Order Form and any Documentation.

**Term:** the Initial Term and any Renewal Term as detailed in any Order Form.

**The Customer:** means the business detailed in the Order Form. **Users:** the individuals who are authorised by the Customer to access and use the Services in accordance with this Agreement.

**User Subscription:** the user subscriptions purchased by the Customer under this Agreement (and as further detailed in any Order Form) which entitle Users to access and use the Services in accordance with this agreement.

**Vism:** means Vism Ltd.

A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account any amendment, extension, or re-enactment and includes any subordinate, interim or provisional legislation for the time being in force made under it. Any words following the terms including, include, in particular, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement. The details of the Customer Subscription and the Customer Order Form form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

## 1. SERVICES

**1.1** This **Agreement** will operate as a framework agreement which defines the contractual terms and conditions under which Vism will supply Services to the Customer. Whilst this Agreement remains in force, the parties shall agree the provision of Services as set out in an Order Form which shall be governed by and be subject to, the terms and conditions of this Agreement.

**1.2** **Terms of this Agreement.** This Agreement shall commence on the Start Date when Services are made available to the Customer and shall continue throughout any **Initial Term** unless earlier terminated in accordance with the terms of this Agreement.

**1.3** **Provision of Services.** Vism shall, during the Term, use commercially reasonable endeavours to make the Services available 24 hours a day seven days a week, except for: (a) planned maintenance carried out during the maintenance window of 22:00 to 08:00 UK time; and (b) unscheduled maintenance performed outside of normal business hours, provided that Vism has used reasonable endeavours to give the Customer at least [6 normal business hours' notice in advance.

**1.4** **Support Services.** Vism will, as part of the Services, provide the Customer with Vism's standard customer support services as detailed in the Customer Subscription. Vism may amend its support services at its discretion from time to time.

**1.5** **Updating Service.** As part of its updating service Vism shall provide error correction, patches, fixes and updates to the Services as generally made available to its customers. Where requested, the Customer may be required to update the Customer's IT hardware or software in order to continue to comply with any required Minimum Specification for the Services. For the avoidance of doubt the cost of the updating service described in this clause is included in the Subscription Fees, but excludes any sum payable by the Customer to ensure compatibility with the Services. Vism shall have no liability whatsoever for any failure of Customer hardware or software to comply with the Minimum Specification.

**1.6** **Service Improvements.** the Customer acknowledges that Vism may change or modify the Services from time to time. Vism shall only be required to provide the Customer with reasonable notice of a change or modification to the Services in advance if the change or modification is material (and does not extend or enhance the functionality or architecture of the Services) or may substantially adversely affect the Customer's use of the Services.

**1.7** Any dates quoted for delivery of Services are approximate only. Any services which are not detailed in the Customer Subscription are out of scope and subject to additional charges.

**1.8** **Variation to this Agreement.** Vism may make changes to this Agreement from time to time on reasonable advance notice to the Customer of no less than 30 days. Any revised version of this Agreement shall automatically apply to any Renewal Term or any Add-On Services when purchased.

**1.9** Unless otherwise agreed in writing, the Customer acknowledges that the Services have not been developed to meet the Customer's individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and

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functions of the Services as described in the Subscription Documentation meet the Customer's requirements.

### 2. SUPPORT IN ACCESSING AND USING VISM SERVICES

- 2.1 Following signature of the Customer Order Form for a Subscription, and payment being made Vism will contact the Customer to provide the Customer with the information the Customer needs to access and use the Services.
- 2.2 Please refer to the Customer Subscription Documentation for information and assistance around using and accessing Vism Services. The support services provided as part of the Customer Subscription are detailed in the Customer Subscription Documentation. Any support requests or other assistance requested which is outside the scope of the Customer Subscription will be chargeable as additional services.
- 2.3 **Migration Services.** Where specified in an Order Form, Vism shall use reasonable efforts to ensure the accurate migration of any data, but gives no warranties as to the completeness or accuracy of such migration. The Customer shall be entirely responsible for checking the accuracy and completeness of the data provided to Vism and any migrated data and shall promptly give sufficient details to Vism of any inaccuracies or omissions in order to permit Vism to correct them. Any corrections or modifications to migrated data shall be chargeable activities at Vism's rates then in force for such services.
- 2.4 **The Customer's responsibility to understand Vism Services.** The Customer acknowledges and agrees that whilst the Services are designed for ease of use, it is the Customer's responsibility to ensure that any individuals involved in accessing and using the Services are appropriately trained in the use of any applicable technology and understand and are familiar with the Services and any training materials or Documentation made available to the Customer relating to them. In the event that Vism identify that any repeated requests for assistance are as a result of inadequate training either in respect to the Customer own systems or the Services, this assistance will be provided as additional services, at Vism's discretion. The Customer is solely responsible for ensuring that all users of the Services are appropriately trained in its use. Vism shall have no responsibility to provide support if support issues are deemed by Vism to be the result of misuse or lack of appropriate training by the Customer in the use of Services.
- 2.5 The Customer acknowledges that the provision of Services to the Customer is based on the Customer meeting applicable service requirements ("**Set Up Requirements**") as detailed in the Subscription Documentation provided to the Customer.
- 2.6 In the event that the Customer does not provide Vism with the information Vism requires from the Customer (and that information is accurate and complete in all respects) at each stage of the onboarding and set up process or otherwise comply with the Set Up Requirements, Vism will not be liable for the Customer's inability to make use of the Services in whole or part, and any additional work required by Vism to support the Customer's onboarding, access to

the Services or to otherwise assist in Set Up shall be chargeable (and provided at our discretion) as additional services at Vism's standard rates then in force. Vism is not liable for any delay or inability to use or access the Services in whole or part directly or indirectly caused by a delay by the Customer or any third party or any failure to comply with the Customer obligations under this Agreement.

### 3. LICENSE

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with this Agreement, the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, Vism hereby grants to the Customer a non-exclusive, non-transferable, non-sub-licensable, revocable right: (a) to permit Users to use the Services and the Documentation during the Term; and, (b) to access and use the Services and the Documentation within the limits of the Subscription the Customer has purchased.
- 3.2 **Limitations on Use.** The rights provided under this Agreement are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company unless otherwise agreed in writing.
- 3.3 **Maximum number of users.** In relation to Users, the Customer undertakes that: (a) the maximum number of Users that it authorises to access and use the Services and the Documentation shall not exceed the User Subscriptions it has purchased from time to time; (b) it will not allow any User Subscription to be used by more than one individual User and is non-transferable; (c) each User shall comply with all guidance provided by Vism with regards to the security of their login credentials and keep this information confidential.
- 3.4 **Exceeding the limits of the Customer Subscription or Services.** If the Customer's use of the Services exceeds any limits detailed in any Subscription, Vism shall be entitled to increase its Fees to account for such additional use of the Services and automatically apply those increased Fees to the Customer Subscription. In the event that Vism are unable to debit such Fee increase automatically from the Customer, Vism shall issue an invoice reflecting the increase in Fees and the Customer shall pay such invoice within 10 days of receipt. If at any time it becomes apparent to Vism that the Customer has underpaid Fees, all Fees applicable to the Customer's actual historical use will be immediately payable to account for any shortfall. Vism may audit the Customer's use of the Services at any time to ensure compliance with this Agreement.
- 3.5 Where the Customer amends their Subscription part way through any Term including by the addition of Add-On Services or additional Users, such additional Fees as may be payable shall be pro-rated from the date of activation by Vism for the remainder of the then current Term.
- 3.6 The Customer may from time to time provide access to the Services to its third-party partners ("**Partners**"). The Customer undertakes that it is liable for the actions or inactions of its Partners under this Agreement and in respect to the use of the Services as if they were its own. Prior to permitting access to the Services, the Customer shall ensure that any Partners

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have been made aware of, agreed and signed the Vism EULA.

### 4. VISM'S OBLIGATIONS

- 4.1 Warranty** Vism warrants that it will perform the Services substantially in accordance with the material terms of the Documentation and with reasonable skill and care.
- 4.2** The undertaking at clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Vism's instructions, or modification or alteration of the Services by any party other than Vism. If the Services do not conform with the foregoing warranty, Vism will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or if reasonably practicable, provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer sole and exclusive remedy for any breach of the warranty set out in this clause. Notwithstanding the foregoing, Vism: **(a)** does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer requirements; and **(b)** is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.3** Vism shall have no obligation to provide any services under this clause (and shall be entitled to charge the Customer additional charges at its then current rates) where faults or support requests arise from: **(a)** misuse, incorrect or unauthorised use of the Services; **(b)** failure of the Customer hardware or software or any part of it; **(c)** use of the Services not in accordance with guidance provided by, or in combination with any hardware or software not approved by, Vism; **(d)** any breach of the Customer obligations under this Agreement.
- 4.4** The warranties and representations set out in this clause are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement. Without limitation, Vism specifically denies any implied or express representation that the Services will be fit for any purpose or use other than that specifically stated by Vism in writing in the Documentation.

### 5. INTEGRATION WITH THIRD PARTIES

- 5.1** The Customer acknowledges that the Services enable or assist access to the Services by third parties. The use of this functionality is solely at the Customer's own risk. Vism shall have no liability or obligation whatsoever in relation to the unavailability of, or use or misuse of the Services by any third-party. The Customer accepts all responsibility for and agrees to release Vism entirely from any claims, liabilities, disputes, actions or proceedings arising from or

connected to the Customer's interaction with any third party through, or as a result of the provision of Services or in respect to any transfer or transaction.

- 5.2 Third Party Software.** Vism shall provide any Third-Party Software to the Customer under the standard licence terms provided by the relevant third party. Vism is not responsible in any way for any third party software's performance, features or failures and makes no warranty in respect to the software being fit for the Customer's purposes.
- 5.3 Third Party Services / Integration.** Vism offer services and functionality using third party developer tools such as application programming interfaces ("APIs") (our "Integration Services") These third party API terms and conditions contain restrictions on access, storage and use of information. Vism have no control over the content of third party sites or resources which we link to through our use of APIs or your use of the Vism API and accept no liability or responsibility for them, your use or inability to use Integration Services, the web sites they link to or their contents, their accuracy or reliability or for any loss or damage (direct, indirect, special, consequential or otherwise) whatsoever that may arise from your use of any of them or the results obtained. Your use of Vism Integration Services is on an "as is" basis and without any warranty of any kind (subject to any additional Vism terms that may apply).
- 5.4** You acknowledge and agree that: (i) the use and availability of certain parts of the Vism Services may be dependent on third-party product vendors and service providers, (ii) these third-party products and services may not operate in a reliable manner all of the time and they may impact on the way that Vism Services operate, and (iii) Vism are not responsible for damages and losses due to the operation of these third-party products and services.
- 5.5** You should contact the third party with any questions about third-party products and services or any issues with them including integration with your own systems.

### 6. RESTRICTIONS OF USE AND ACCEPTABLE USE POLICY

- 6.1** The Customer shall not upload, access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that: **(a)** is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; **(b)** facilitates illegal activity; **(c)** depicts sexually explicit images; **(d)** promotes violence; **(e)** is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; **(f)** causes damage or injury to any person or property; or **(g)** there has been unauthorised or suspected fraudulent or otherwise suspicious activity related to the Customer's use of the Services; and Vism reserves the right, without liability to the Customer, to disable the Customer access to Services as a result of a breach of the provisions of this clause.
- 6.2** Except to the extent expressly permitted under this Agreement and to the maximum extent permitted by law, the Customer shall not: **(a)** **(i)** attempt to copy, reproduce, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Documentation (as applicable) in any

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form or media or by any means; or **(ii)** attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or; **(b)** access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or **(c)** use the Services and/or Documentation to provide services to third parties or offer any part of the Services for sale or distribution over any other medium; or **(d)** license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to anyone except the Users; or **(e)** attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation; or **(f)** permit any third party to benefit from the use or functionality of the Services.

### 7. THE CUSTOMER OBLIGATIONS

**7.1** The Customer shall: (a) provide Vism with all necessary and timely co-operation in relation to this Agreement; including all necessary access to such information as may be required by Vism in order to render the Services, including but not limited to, Data and documentation requested for the provision of the Services (and ensure that such information and data is accurate in all material respects). Vism is not liable for any inability to use the Services in whole or part directly or indirectly caused by the Customer or any third party; (b) appoint an individual who shall have the authority to contractually bind the Customer on matters relating to the Services; (c) be responsible (at the Customer's own cost) for ensuring that the Customer's hardware and software complies with the relevant specifications to use the Services provided by Vism, including the Minimum Specification, as amended from time to time; (d) comply with all applicable laws and regulations with respect to the Customer activities under this Agreement and in the Customer's use of the Services;

**7.2 Mobile Use** The Customer is responsible for ensuring that any handheld device used to access or use the Services complies with the minimum device specification provided by Vism from time to time. Vism do not guarantee that the Services will work (or be fully functional) on devices not approved by Vism. The Customer shall ensure: (a) that there is full internet access through GPRS, 3G (or similar) or Wi-Fi; (b) there is full connectivity via a mobile GSM connection; (c) there is full connectivity via a wireless or fixed line internet connection, in order for handheld devices to accurately send data to the Services and for synchronisation purposes. Vism is not responsible for the operation or failure of operation or availability of or access to any mobile or internet services resulting in the Customer being unable to use the Services. In the event that any devices used to access the Services are unable to connect to the Services, unless caused directly by Vism, all Fees payable by the Customer shall remain payable.

**7.3** The Customer is responsible for ensuring that the User's use of the Services and Documentation is in accordance with the terms and conditions of this Agreement and shall be responsible for any User's breach of this Agreement. The Customer undertakes

that each User shall keep their credentials secure for their use of the Services and Documentation. To the extent permissible by law, Vism will not be liable for any loss that the Customer, a User or any third party may incur as a result of any use or misuse of any part of the Services, whether with or without the Customer's knowledge.

**7.4** The Customer shall be responsible for:

- (a) **Safeguarding and Security** be solely responsible for procuring and maintaining the Customer's network connections and telecommunications links from its systems to the Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
- (b) operate best practice and ensure appropriate security precautions are taken in connection with its use of the Services. The Customer is responsible for taking all reasonable steps to mitigate the risks inherent in the provision and receipt of the Services, including data loss and taking all reasonable and usual precautions to safeguard the Customer's IT infrastructure, including taking backups, operating firewalls and virus checks and implementing effective and appropriate data security in respect to the provision and receipt of Services.
- (c) **Compliance with Legal Requirements** the Customer is solely responsible for ensuring that the Customer's use of the Services complies with any legal or regulatory requirements and is not fraudulent.

### 8. DATA AND DATA PROTECTION

**8.1 Customer Data.** the Customer shall own all rights, title and interest in and to all of the Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Data.

**8.2** Vism shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Data as amended from time to time by Vism in its sole discretion.

**8.3** Vism acknowledges that all intellectual property and other proprietary rights in all data generated from the use by the Customer of the Services (the "Service Data") are owned and shall continue to be owned by the Customer.

**8.4** The Customer grants to Vism a non-exclusive, perpetual, irrevocable, royalty free license to use any data generated from the Customer's use of the Services ("Service Data") and any Data (provided that such data is anonymised) for the purpose of: **(a)** statistical analysis and monitoring, querying and analysing such data for the purpose of providing the Services and improving the quality of services Vism provides to its customers; **(b)** exercising its rights and fulfilling its other obligations under this Agreement; **(c)** complying with any applicable governmental or regulatory requirements; and/or **(d)** any other commercial purposes of Vism.

**8.5** The parties acknowledge that if Vism processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and Vism is the processor for the purposes of the **Data Protection Legislation**. Schedule 1 sets out the obligations of the parties in respect to the processing of personal data.

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### 9. SUSPENSION OF SERVICES

- 9.1** Vism may suspend Services without liability if: **(a)** Vism reasonably believes that the Services are being used in breach of the Agreement and the Customer does not remedy the failure within fourteen days of Vism's written notice to the Customer describing the breach; **(b)** the Customer doesn't co-operate with Vism's reasonable investigation of any suspected violation of the Agreement; **(c)** there is an attack on the Services or the Services are accessed by or manipulated by a third party without Vism's consent; **(d)** Vism is required by law to suspend the Services or the Customer's access to the Services; **(e)** there has been unauthorised or suspected fraudulent or suspicious activity relates to the Customer's use of the Services; or **(f)** there is another event for which Vism reasonably believe that suspension of the Services is necessary to protect its or any other party's network, system, the Services or other customers.
- 9.2** Vism will use reasonable endeavours to give the Customer advance notice of a suspension under this Clause 9, unless Vism determines in its reasonable commercial judgement that an immediate suspension is necessary to protect Vism or its customers from imminent and significant operational or security risk, or if to do so would be unlawful or Vism have grounds to suspect fraudulent or any other form of criminal use of the Services.
- 9.3** For the avoidance of doubt, any suspension of Services, unless caused directly by Vism, shall not suspend the Customer's obligation to pay any Fees.

### 10. CHARGES AND PAYMENT

- 10.1** The Customer shall pay the Fees to Vism in accordance with this clause 10, subject to any other payment terms detailed in the Customer Order Form, or as otherwise agreed between the parties.
- 10.2** The Customer shall provide to Vism relevant valid, up-to-date and complete contact and billing details and payment method to process any payments (either credit card, direct debit or debit card) and Vism shall invoice the Customer on the Start Date for the Fees payable for the Subscription and the applicable Initial Term, as detailed in the Customer Order Form. By submitting such payment information, the Customer automatically authorise Vism (without any further reference to the Customer) to charge to such payment instrument all Fees incurred through the Customer's use of the Services.
- 10.3** The Customer must have an open payment channel such as a Direct Debit or Automatic Card Payment set up with Vism. If this is cancelled or payment fails through the agreed channel, the Customer undertakes to make payment for any outstanding balance of any Fees due or payable to Vism under the Agreement, in full, within 10 working days. Failure to make this payment will result in legal action to recover the monies due.
- 10.4** If Vism has not received payment within 7 days after the due date for any Fees, then without prejudice to any other rights and remedies of Vism: **(a)** Vism may, without liability to the Customer, on 2 days advance notice, disable the Customer's account and suspend access to all or part of the Services and Vism shall be under no obligation to provide any or all of the Services while the invoice(s) concerned, any interest,

administrative and legal costs of collecting payment and any further sums payable, remain unpaid; and **(b)** interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of Lloyds TSB at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

- 10.5** All amounts and fees stated or referred to in this Agreement: **(a)** are non-cancellable and non-refundable; **(b)** are exclusive of applicable tax, which shall be added to Vism's invoice(s) at the appropriate rate.
- 10.6** Vism shall be entitled to increase the Fees payable for Services at the start of each Renewal Term, on ninety days' prior written notice to the Customer. In the event that the Customer does not agree to such increase, the Customer may terminate this Agreement at the end of the Initial or then-current Renewal Term. In the event that the Customer does not notify Vism that the Customer objects to any increase, the Renewal Term shall be extended and include the increase in Fees accordingly.

### 11. PROPRIETARY RIGHTS

- 11.1** The Customer acknowledges and agrees that Vism and/or its licensors are the sole and exclusive owners of all intellectual property and other proprietary rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Services or the Documentation.
- 11.2** Subject to Clause 14, if any claim is brought against the Customer that the normal use or possession of the Services in accordance with this Agreement infringes the intellectual property rights of a third party in the UK, Vism shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims provided that: **(a)** the Customer immediately notifies Vism in writing of any such claim of which the Customer become aware and provides Vism with reasonable co-operation in the defence and settlement of such claim; **(b)** the Customer does not make any admission as to liability or compromise or agree any settlement of any claim without the prior written consent of Vism; **(c)** Vism is given sole authority to defend or settle the claim.
- 11.3** In the defence or settlement of any claim, Vism may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4** In no event shall Vism, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: **(a)** a modification of the Services or Documentation by anyone other than Vism; or **(b)** the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Vism; or **(c)** the Customer's use of the Services or

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Documentation after notice of the alleged or actual infringement from Vism or any appropriate authority.

- 11.5** The foregoing states the Customer's sole and exclusive rights and remedies, and Vism's (including Vism's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

### **12. CONFIDENTIALITY**

- 12.1** Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that: **(a)** is or becomes publicly known other than through any act or omission of the receiving party; **(b)** was in the other party's lawful possession before the disclosure; **(c)** is lawfully disclosed to the receiving party by a third party without restriction on disclosure; **(d)** is independently developed by the receiving party, which independent development can be shown by written evidence; or **(e)** is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body, provided that to the extent practicable and permitted by law, the receiving party shall promptly notify the disclosing party in advance of such requested disclosure and provide the disclosing party with an opportunity to object to such request.
- 12.2** Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3** Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.4** Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, provided that such party has taken reasonable steps to protect and avoid the loss, destruction, alteration or disclosure of such Confidential Information.
- 12.5** the Customer acknowledges that details of the Services, and the results of any performance, security, penetration, vulnerability or other logical, analytical, data or information gathering tests carried out on the Services, constitute Vism's Confidential Information.
- 12.6** Vism acknowledges that the Customer's Data is the Customer's Confidential Information.
- 12.7** This clause 12 shall survive termination of this Agreement, however arising.

### **13. INDEMNITY**

- 13.1** The Customer shall defend, indemnify and hold harmless Vism against claims, actions, liabilities, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with: (i) the Customer's or any User's use of the Services and/or Documentation; or (ii) the Customer's collection, use, processing and/or transfer of any Data, Service Data or other personal data; or (iii) any claim

of any of any kind including legal fees arising from any claim, demand or action alleging that any use the Customer makes of the Services is contrary to any law, code or regulation in any country.

- 13.2 Vism's indemnity if Services infringe any third party IP / Vism breaches DPA 2018.** Vism shall, subject to clause 14.4, defend the Customer against any claim that: (a) the Services infringe any United Kingdom patent effective as of the Start Date, UK copyright, trade mark, or right of confidentiality; (b) Vism have breached the Data Protection Act 2018, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that: (i) Vism is given prompt notice of any such claim; (ii) the Customer provides reasonable co-operation to Vism in the defence and settlement of such claim, at Vism's expense; and (iii) Vism is given sole authority to defend or settle the claim. In the defence or settlement of any claim, Vism may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, and Vism are unable, after best efforts, to procure for the Customer the right to continue using the Services or to provide functionally equivalent Services, terminate this agreement on 14 Business Days' notice without further liability to the Customer.

- 13.3 Exclusions to Vism's IP and Data Protection Indemnity.** In no event shall Vism, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (a) a modification of the Services by anyone other than Vism; or (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Vism; or (c) the Customer's use of the Services after notice of the alleged or actual infringement from Vism or any appropriate authority.

- 13.4** The foregoing states each party's sole and exclusive rights and remedies, and each party's (including that party's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

### **14. LIMITATION OF LIABILITY**

- 14.1** This clause 14 sets out the entire financial liability of Vism (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of: **(a)** any breach of this Agreement and any support services; **(b)** any use made by the Customer of the Services and Documentation or any part of them; and **(c)** any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

- 14.2** Except as expressly and specifically provided in this agreement: **(a)** Vism shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Vism by the Customer in connection with the services, or any actions taken by Vism at the Customer's direction; **(b)** all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, disclaimed and excluded from this

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agreement including, without limitation, any warranties of title, merchantability, or fitness for a particular use or purpose; and (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

- 14.3** Nothing in this Agreement excludes the liability of either party: (a) for death or personal injury caused by Vism's negligence; or, (b) for fraud or fraudulent misrepresentation.
- 14.4** Subject to clause 14.1 and clause 14.3: (a) to the maximum extent permitted by law, Vism shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect, punitive, exemplary or consequential loss, costs, damages, charges or expenses however arising under or relating to this agreement, even if Vism has been advised of the possibility thereof, and regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based.; and (b) Vism's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total amount of Fees paid by the Customer to Vism during the 6 months immediately preceding the date on which the claim arose. As the Fees for the service properly reflect the delineation of risk between the parties, each party agrees to ensure that it will be responsible for making its own arrangements for the insurance of any loss in excess of its accepted legal liability as necessary.
- 14.5** Under no circumstances shall Vism be responsible or liable for any harm caused by the transmission, through the Services, of a computer virus, or other computer code or programming device that might be used to access, modify, delete, damage, corrupt, deactivate, disable, disrupt, or otherwise impede in any manner the operation of any of the Customer software, hardware, data or property.
- 14.6** Under no circumstances shall Vism be responsible or liable for: (a) any inaccuracy, error or delay in, or omission of any data or information entered into the Services by the Customer or any third party; (b) any error or delay in the transmission of such data or information; or (c) any interruption in any such data or information.

### 15. TERM AND TERMINATION

- 15.1** This Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the **Start Date** and shall continue through the **Initial Term** and (unless otherwise stated in the Customer Order Form) thereafter, this Agreement shall be automatically renewed for successive rolling periods of the Initial Term (each a **Renewal Term**), unless: (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or 60 days before the end of any Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial or Renewal Term; or (b)

otherwise terminated in accordance with the provisions of this Agreement.

- 15.2** The Initial Term together with any subsequent Renewal Terms shall constitute "**the Term**",
- 15.3** Without affecting any other rights that it may be entitled to, either party may terminate this Agreement without liability to the other if: (a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or (b) the other party has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or it ceases or threatens to cease or carry on business.
- 15.4** Without affecting any other rights that it may be entitled to, Vism may terminate the Agreement for breach if: (a) payment of any invoiced amount (except to the extent such invoice is disputed in good faith) or Fee payable is overdue and following notification to the Customer, the Customer does not pay the overdue amount within seven Business Days of a written notice from Vism; (b) the Customer breaches the acceptable use policy in clause 6.
- 15.5** On termination of this Agreement for any reason: (a) all licences and access to the Services granted under this Agreement shall immediately terminate and the method of access supplied to the Customer will automatically expire and the Services will cease to operate immediately; and (b) Vism may destroy or otherwise dispose of any of the Customer Data in its possession unless Vism receives, no later than 10 business days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. This will be delivered to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Vism in returning or disposing of the Customer Data; and (c) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 15.6** The parties may following termination agree a 30 day transition period for Services to continue, subject to the payment of an agreed fee in advance to Vism.
- 15.7** If this Agreement is terminated prior to the end of the Initial Term or any Renewal Term, other than for material breach by Vism under clause 14.3, all fees payable up to the end of the Initial Term or any Renewal Term and all other fees due and payable to Vism under this Agreement shall be immediately due and payable to Vism.

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### 16. FORCE MAJEURE

Vism shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Vism or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Vism's or sub-contractors for so long as said cause persists, provided that the Customer are notified of such an event and its expected duration.

### 17. GENERAL

- 17.1** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.2** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17.3** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 17.4** This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 17.5** the Customer shall not, without the prior written consent of Vism, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Vism may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 17.6** Nothing in this Agreement is intended to or shall operate to create a partnership, joint venture, agency, franchise or employment relationship between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind

the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

- 17.7** This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns).
- 17.8** Each of the provisions of clauses 7 through 19 shall survive any termination or expiration of this Agreement in accordance with their terms.

### 18. NOTICES

- 18.1** Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes as set out in this Agreement. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at 9am on the first day following delivery. Where Vism is required under this Agreement to give the Customer any notice in writing, Vism may give this notice by letter or by email.

### 19. GOVERNING LAW AND JURISDICTION

- 19.1** This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 19.2** The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## Schedule 1 – Data Processing Obligations

**Data Protection Legislation:** means the data privacy laws applicable to the processing services provided by the Parties to each other, including, where applicable, the Directive 95/46/EC, as amended or replaced by any subsequent regulation, directive or other legal instrument of the European Union including by the GDPR or similar law, the Privacy and Electronic Communications Regulations 2003 or the e-Privacy Regulation 2017, or the applicable data privacy laws of any other relevant jurisdiction, including the DPA, and all applicable formal or informal guidance, rules, requirements, directions, guidelines, recommendations, advice, codes of practice, policies, measures or publications of the Information Commissioner's Office, other relevant regulator, and/or relevant industry body in each case in any relevant jurisdiction;

The personal data may be transferred or stored outside the EEA or the country where the Customer and the Users are located in order to carry out the Services and Vism's other obligations under this agreement.

The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Vism for the duration and purposes of this agreement so that Vism may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer behalf.

Vism shall, in relation to any personal data processed in connection with the performance by Vism of its obligations under this agreement: **(a)** process that personal data only on the Customer documented written instructions unless Vism is required by the laws of any member of the European Union or by the laws of the European Union applicable to Vism and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where Vism is relying on Applicable Laws as the basis for processing personal data, Vism shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Vism from so notifying the Customer; **(b)** not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled: **(i)** the Customer or Vism has provided appropriate safeguards in relation to the transfer; **(ii)** the data subject has enforceable rights and effective legal remedies; **(iii)** Vism complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and **(iv)** Vism complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data; **(c)** assist the Customer, at the Customer cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; **(d)** notify the Customer without undue delay on becoming aware of a personal data breach; **(e)** at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and **(f)** maintain complete and accurate records and information to demonstrate its compliance with this Schedule 1 and immediately inform the Customer if, in the opinion of Vism, an instruction infringes the Data Protection Legislation.

Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

**The Customer** consents to Vism appointing third parties as a third-party processor of personal data under this agreement. Vism confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Schedule 1 and in either case which Vism confirms reflect and will continue to reflect the requirements of the Data Protection Legislation.